

Air Quality



Air Quality: From Worksheet

Air Quality (CEST and EA)

General Requirements
The Clean Air Act is administered by the U.S. Environmental Protection Agency (EPA), which sets national standards on ambient pollutants. In addition, the Clean Air Act is administered by States, which must develop State Implementation Plans (SIPs) to regulate their state air quality. Projects funded by HUD must demonstrate that they conform to the appropriate SIP.

Legislation
Clean Air Act (42 USC 7401 et seq.) as amended particularly Section 176(c) and (d) (42 USC 7506(c) and (d))

Regulation
40 CFR Parts 6, 51 and 93

Reference
<https://www.hudexchange.info/environmental-review/air-quality>

Scope of Work

1. Does your project include new construction or conversion of land use facilitating the development of public, commercial, or industrial facilities OR five or more dwelling units?

☐ Yes

→ Continue to Question 2.

☐ No

Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below. Provide any documents used to make your determination.

Air Quality From HUD Exchange

- Does your project include new construction or conversion of land use facilitating the development of public, commercial, or industrial facilities OR five or more dwelling units?
- Federal projects must conform to Clean Air Act requirements if they may constitute a significant **new source of air pollution**.
- **If your project does not involve new construction or conversion of land use as indicated above, it can be assumed that its emissions are below de minimis levels and the project is in compliance with the Act.**
- If so, is your project's county or air quality management district in nonattainment or maintenance status for any criteria pollutants?
 - Various Websites, include One CPD, TCEQ will provide this information
- If your project's county or air quality management district is in attainment status for **all criteria pollutants, the project is in compliance with the Clean Air Act.**
- Otherwise, determine which criteria pollutants are in nonattainment or maintenance status and proceed to step 3.

Air Quality: Sample Documentation


- A determination that the project does not include new construction or conversion of land use facilitating the development of public, commercial, or industrial facilities OR five or more dwelling units
- Documentation that the project's county or air quality management district is not in nonattainment or maintenance status for any criteria pollutants
- Evidence that estimated emissions levels for the project do not exceed de minimis emissions levels for the nonattainment or maintenance level pollutants
- A determination that the project can be brought into compliance with the State Implementation Plan (SIP) through modification or mitigation, including documentation on how the project can be brought into compliance

Air Quality: Sample Documentation

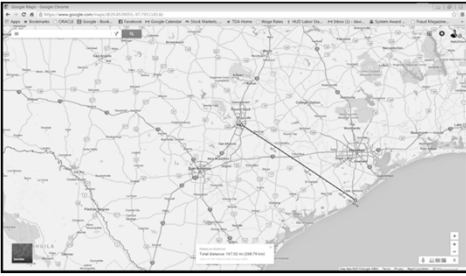
- Reference to the project description showing the details of the project
- Answered questions on the HUD Worksheet for this category.
- Written statements of non-concern regarding air quality, including asbestos
- Mitigation plans and survey results by qualified persons
- If asbestos or other air issues then further detailed documentation will be required.

Sample Attainment / Non Attainment Map






Coastal Zone Management: Sample ERR Documentation




- Map showing the distance of the Entity from the CMZ
- Reference to the Project Description
- Reference to the photos.



ENDANGERED SPECIES

24 CFR §58.5(e)
and
24 CFR §50.4 (e)





“You’re Gonna Do What?!!!”





Endangered Species - Things to Remember

- You have to prove that you will not impact any of the species known to be in the area.
- Simply stating that there is no impact is not good enough.
- Use the resources provided by the various services to compare their habitat to your project site.
- If a service has concerns then you have to address them.
- The CEO has to make a written statement of no impact to the file.
- PHOTOS , PHOTOS, PHOTOS!!!!

Endangered Species - From the Worksheet

Endangered Species Act (CESY and EA)		
General requirements	ESA Legislation	Regulations
Section 7 of the Endangered Species Act (ESA) mandates that federal agencies ensure that actions that they authorize, fund, or carry out shall not jeopardize the continued existence of federally listed plants and animals or result in the adverse modification or destruction of designated critical habitat. Where their actions may affect resources protected by the ESA, agencies must consult with the Fish and Wildlife Service and/or the National Marine Fisheries Service ("FWS" and "NMFS" or "the Services").	The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); particularly section 7 (16 USC 1536).	50 CFR Part 402
References https://www.hudexchange.info/environmental-review/endangered-species		

1. Does the project involve any activities that have the potential to affect species or habitats?

☐ No, the project will have No Effect due to the nature of the activities involved in the project.
 → Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below. Provide any documents used to make your determination.

☐ No, the project will have No Effect based on a letter of understanding, memorandum of agreement, programmatic agreement, or checklist provided by local HUD office.
 Explain your determination:

→ Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below. Provide any documents used to make your determination.

☐ Yes, the activities involved in the project have the potential to affect species and/or habitats. → Continue to Question 2.

2. Are federally listed species or designated critical habitats present in the action area?

Endangered Species – From HUD Exch.

- If you are able to determine based on the types of activities involved in your project that it will have No Effect on listed species or designated critical habitats, the project is in compliance with the ESA. **Describe your analysis and conclusions** in the environmental review record (ERR), including references to local agreements and checklists if applicable.
- To determine whether there are federally listed species or designated critical habitats in the action area, **first define the action area**. For purposes of the ESA, the "action area" **includes all areas that your project will affect either directly, indirectly, and/or cumulatively, and is not merely the immediate area** involved in the project. (50 CFR 402.02) **Next, obtain a list of protected species from the Services.**
- **Proceed with the Checklist AND Workbook.**

Endangered Species

- The environmental review record should contain **one** of the following determinations and supporting documentation:
- No Effect, including a determination that the project does not involve any activities that have a potential to affect species or habitats, evidence that there are no federally listed species in the area, or other analysis supporting a No Effect finding
- May Affect, Unlikely to Adverse Affect, including all correspondence with the Fish and Wildlife Service or the National Marine Fisheries Service
- Likely to Adversely Affect, including all correspondence with the Fish and Wildlife Service or the National Marine Fisheries Service

Activities likely to have no effect HUD

- Demolition and construction or placement of a single family residence w/in a developed lot.
- Rehab of existing structures including those attached to primary
- Playground purchase and placement
- Resurfacing, repairing or maintaining existing roads, sidewalks and curbs where additional ground disturbance is not required.
- Current infrastructure is included in the definition of Existing Structures.

Endangered Species - Sample of ERR Documentation

- Photos of the worksite and surrounding area
- List of known species in the county and their required habitat
- Comparison of Habitat Requirements to that of the work site
- Statement of no effect from CEO
- Maps of the worksite and surrounding area
- Detailed Project Description
- Statement of how conditions are not conducive to known species

Explosives, Flammable Facilities

Explosives, Flammable Facilities

Explosives and Flammable Operations - From the Worksheet

Explosive and Flammable Hazards (CEST and EA)

General requirements	Legislation	Regulation
HUD-assisted projects must meet Acceptable Separation Distance (ASD) requirements to protect them from explosive and flammable hazards.	N/A	24 CFR Part 51 Subpart C

Reference

<https://www.hudexchange.info/environmental-review/explosive-and-flammable-facilities>

1. Does the proposed HUD-assisted project include a hazardous facility (a facility that mainly stores, handles or processes flammable or combustible chemicals such as bulk fuel storage facilities and refineries)?

☐ No

→ Continue to Question 2.

☐ Yes

Explain:

→ Continue to Question 5.

2. Does this project include any of the following activities: development, construction, rehabilitation that will increase residential densities, or conversion?

☐ No

→ Based on the response, the review is in compliance with this section. Continue to... the Worksheet Summary below.

☐ Yes

→ Continue to Question 3.

Explosives and Flammables: From HUD Exch.

1. When considering explosive and flammable facilities in the context of HUD-assisted projects, two lines of inquiry are appropriate:

- Aboveground stationary storage tanks near the project
- **Does this project include any of the following activities: development, construction, rehabilitation that will increase residential densities, or conversion?**
- **If so, within 1 mile of the project site, are there any current *or* planned stationary aboveground storage containers:**

Farmland Protection



Farmland Protection

HUD Guidance

Does your project include any activities, including new construction, acquisition of undeveloped land, or conversion, that could potentially convert one land use to another? Federal projects are subject to FPPA requirements if they may irreversibly convert farmland to a non-agricultural use. A finding of compliance with the requirements of the Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) must be made for assisted new construction activities, the acquisition of undeveloped land, and conversion projects.

If so, does your project meet one of the following exemptions?

- Construction limited to on-farm structures needed for farm operations
- Construction limited to new minor secondary (accessory) structures such as a garage or storage shed
- Project on land used for water storage
- Project on land already in or committed to urban development (7 CFR 658.2(a))

Farmland subject to FPPA requirements does not have to be currently used for cropland. USDA/NRCS regulations contained at 7 CFR Part 658.2 define "committed to urban development" as land with a density of 30 structures per 40-acre area; lands identified as "urbanized area" (UA) on the Census Bureau Map or as urban area mapped with a "tint overprint" on USGS topographical maps; or as "urban-built-up" on the USDA Important Farmland Maps. Note that land "zoned" for development, i.e. non-agricultural use, does not exempt a project from compliance with the FPPA.

Farmland Protection: From Worksheet

Farmlands Protection (CEST and EA)

General requirements	Legislation	Regulation
The Farmland Protection Policy Act (FPPA) discourages federal activities that would convert farmland to nonagricultural purposes.	Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.)	7 CFR Part 658
Reference https://www.hudexchange.info/environmental-review/farmlands-protection		

1. Does your project include any activities, including new construction, acquisition of undeveloped land or conversion, that could convert agricultural land to a non-agricultural use?

☐ Yes → Continue to Question 2.


☐ No

Explain how you determined that agricultural land would not be converted:


→ Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below. Provide any documentation supporting your determination.


Farmland Protection: Sample ERR Documentation

- A determination that the project does not include any activities, including new construction, acquisition of undeveloped land, or conversion, that could potentially convert one land use to another
- Evidence that the exemption applies, including all applicable maps
- Evidence supporting the determination that "Important Farmland," including prime farmland, unique farmland, or farmland of statewide or local importance regulated under the FPPA does not occur on the project site
- Documentation of all correspondence with NRCS, including the completed AD-1006 and a description of the consideration of alternatives and means to avoid impacts to Important Farmland
- Project description and photos of the area





HISTORICAL PRESERVATION





Historical Preservation





Historical Preservation

- Almost all of CDBG projects will either have to consult with THC or apply to be exempt through the Programmatic Agreement.
- However a review is not required if:
 - ✓ PA between THC and TDA.
 - ✓ Activities are Exempt pursuant to 24 CFR Part §58.34(a)(1-11)
 - ✓ If the project is covered under a NEPA process coordinated by another lead federal agency (Explain)
- Consultants may help in the process but the Responsible Entity remains responsible for compliance.
- Item #3 on the back of the RROF.
- Review Includes the characteristics of the area around the project.

Historical Preservation Cont.

- Bill Martin, Texas Historical Commission.
- Any attempt or omission of this requirement will warrant the cancellation of the grant and referral to THC for further review.
- If not cleared upon closeout review then repayment is likely.
- Considered an aggravating factor.
- The RE has not done an Environmental Review until this process is complete.

Historical Preservation - From the Guidebook

- Does the project include the type of activity that would have the potential to affect historic properties such as acquisition, demolition, **ground disturbance, new construction or rehabilitation**?
- Do the RE and State Historic Preservation Office (SHPO) have a Programmatic Agreement (PA) that does not require consultation for this type of activity?
- Is the project located within or directly adjacent to a historic district?
- Is the structure or surrounding structures listed on or eligible for listing on the National Register of Historic Places (e.g. greater than 45 years old)?
- Were any properties of historical, architectural, religious or cultural significance identified in the project's Area of Potential Effect (APE)?
The APE: Includes those areas and characteristics of those areas around the site where you are working.
- Does the project include the types of activities such as those listed below that have the potential to affect historic properties of religious and cultural significance to tribes? NATIVE AMERICAN

Native American Interests

- ONE CPD Website: Checklist for When to Consult with Tribes:
<https://www.hudexchange.info/resources/documents/When-to-Consult-with-Tribes-Under-Section-106-Checklist.pdf>
- HUD Tribal Assessment Tool:
<http://egis.hud.gov/tadat/Tribal.aspx>
- Official Consultation MUST BE FROM THE RESPONSIBLE ENTITY... Unless...
- If No response
- Check State Requirements as well under the THC Website for Native American Interests.
- #3 On the Request for Release of Funds
- Programmatic Agreement with THC.
- Unrecoverable violations

Native American Consultation

- Consultants may not initiate consultation with Native American entities unless that relationship is already established.
- If the NA Entity does not respond to the Admin then the RE is required to file a formal written request from the city or county.
- This will preserve the Gov. to Gov. communication requirement by law.

Historical Preservation – Sample ERR Documents

It's real Simple:

- Letter to THC and Native Americans
 - Your Project Description, Maps, PHOTOS,
 - What is being done and where
 - The worse the information the longer it will take and the less likely of a favorable outcome.
- Response from THC/ Native Americans
- Survey reports
- Reference the photos and maps.
- Copy of clearance with the PA. **DO NOT SEND** The Request for Historical Exemption to THC. Send it to TDA as directed

Site Contamination



Site Contamination From the worksheets

Contamination and Toxic Substances (Multifamily and Non-Residential Properties)

General requirements	Legislation	Regulations
It is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of the occupants or conflict with the intended utilization of the property.		24 CFR 58.5(i)(2) 24 CFR 50.3(i)
Reference		
https://www.hudexchange.info/programs/environmental-review/site-contamination		

1. How was site contamination evaluated?¹ Select all that apply.

- ☐ ASTM Phase I ESA
☐ ASTM Phase II ESA
☐ Remediation or clean-up plan
☐ ASTM Vapor Encroachment Screening
☐ None of the above

→ Provide documentation and reports and include an explanation of how site contamination was evaluated in the Worksheet Summary.
Continue to Question 2.

Site Contamination page 2

2. Were any on-site or nearby toxic, hazardous, or radioactive substances found that could affect the health and safety of project occupants or conflict with the intended use of the property? (Were any recognized environmental conditions or RECs identified in a Phase I ESA and confirmed in a Phase II ESA?)

- ☐ No
 Explain:

¹ HUD regulations at 24 CFR § 58.5(i)(2)(ii) require that the environmental review for multifamily housing with five or more dwelling units or non-residential property include the evaluation of previous uses of the site or other evidence of contamination on or near the site. For acquisition and new construction of multifamily and nonresidential properties HUD strongly advises the review include an ASTM Phase I Environmental Site Assessment (ESA) to meet real estate transaction standards of due diligence and to help ensure compliance with HUD's toxic policy at 24 CFR §58.5(i) and 24 CFR §50.3(i). Also note that some HUD programs require an ASTM Phase I ESA.

→ Based on the response, the review is in compliance with this section.
Continue to the Worksheet Summary below.

- ☐ Yes.

→ Describe the findings, including any recognized environmental conditions (RECs), in Worksheet Summary below. Continue to Question 3.

Site Contamination HUD Exchange

Site Contamination

Introduction

It is HUD policy, as described in 24 CFR Part 50.3(i) and 24 CFR 58.5(i)(2), that:

1. All property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.
2. Environmental review of multifamily and non-residential properties shall include evaluation of previous uses of the site and other evidence of contamination on or near the site, to assure that occupants of proposed sites are not adversely affected by the hazards.
3. Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.
4. The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.

It is therefore essential that responsible entities, potential grant applicants, and other HUD program participants become familiar with the potential environmental issues involving property before leasing, optioning, and/or acquiring the property. Unknown individuals or parties that acquire contaminated property with good intentions could face liability for clean-up costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), third party lawsuits, and costly delays in implementing the project.